UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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ESTATE OF F.R. Jr. and LORI ROSILES,

Plaintiffs,

v.

COUNTY OF YUBA, YUBA COUNTY SHERIFF'S OFFICE, and DOES 1 to 10,

Defendants.

No. 2:23-cv-00846 WBS CKD

MEMORANDUM AND ORDER RE: DEFENDANTS' MOTION TO DISMISS

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Plaintiffs Estate of F.R. Jr. and Lori Rosiles brought this action against plaintiffs County of Yuba, Yuba County Sheriff's Office, and Does 1 through 10 in connection with F.R.'s death. The complaint asserts the following claims: (1) violation of the Fourteenth Amendment under the state-created danger rule; (2) violation of the Fourteenth Amendment under the special relationship exception; (3) unreasonable post-seizure care under the Fourth Amendment; (4) violation of Section 504 of the

Rehabilitation Act; (5) violation of the Americans with Disabilities Act; (6) interference with familial association under the Fourteenth Amendment; (7) interference with familial association under the First Amendment; (8) unreasonable post-seizure care under Article I, § 13 of the California Constitution; (9) violation of the Tom Bane Civil Rights Act; (10) intentional infliction of emotional distress; (11) negligence; and (12) wrongful death. (Compl. (Docket No. 1.) Defendants now move to dismiss the complaint in its entirety. (Docket No. 7.)

I. Factual Background[1]

During the evening of February 5, 2021, 10-year-old F.R. was inside his relatives' residence in Olivehurst, California. (Compl. ¶¶ 15-16.) F.R. was shot in the abdomen with a bullet. (Id. ¶ 17.) F.R.'s relatives called 9-1-1 and the dispatcher informed them than an ambulance would be dispatched. (Id. ¶ 19.) While waiting for the ambulance, F.R.'s relatives prepared a vehicle to take F.R. to the hospital. (Id. ¶ 20.) When the ambulance did not arrive after a "short while," F.R.'s relatives placed him into the backseat of a pickup truck to be transported to the hospital. (Id. ¶ 21.)

As the vehicle was about to depart, several patrol vehicles occupied by Yuba County Sheriff's Office deputies arrived at the residence. (Id. ¶ 22.) The patrol vehicles surrounded the truck and prevented the truck from departing to the hospital. (Id. ¶ 23.) The officers pointed firearms at the

[1] All facts recited herein are as alleged in the Complaint unless otherwise noted.

driver of the truck and dragged F.R. from the truck, laying him on the ground in a puddle of water. (Id. ¶¶ 25, 28.) F.R.'s relatives pleaded with the officers to allow F.R. to be transported in the truck to the hospital, which the officers ignored. (Id. ¶¶ 26-27.) The officers prevented F.R.'s relatives from approaching F.R. (Id. ¶ 32.) F.R.'s mother, Lori Rosiles, arrived at the residence during the incident and was similarly prevented from approaching F.R. (Id. ¶ 34.) The officers did not provide any emergency medical assistance and prevented anyone else at the scene from rendering assistance. (Id. ¶¶ 31-32.)

F.R. lay on the ground for at least fifteen minutes before the ambulance arrived. (Id. ¶ 35.) F.R. was later pronounced dead. (Id. ¶ 39.)

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal when a complaint fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry before the court is whether, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, the complaint has alleged "sufficient facts . . . to support a cognizable legal theory," id., and thereby stated "a claim to relief that is plausible on its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

III. Civil Rights Claims

A. State-Created Danger (First Claim)

Under the state-created danger rule, state actors may be held liable under § 1983 where (1) "'affirmative conduct on the part of a state actor places a plaintiff in danger,'" and (2) the state actor "acts with 'deliberate indifference' to a 'known or obvious danger'" to the plaintiff's safety. Murguia v. Langdon, 61 F.4th 1096, 1111 (9th Cir. 2023) (quoting Penilla v. City of Huntington Park, 115 F.3d 707, 710 (9th Cir. 1997); Patel v. Kent Sch. Dist., 648 F.3d 965, 974 (9th Cir. 2011)).

"To satisfy the first requirement, a plaintiff 'must show that the officers' affirmative actions created or exposed him to an actual, particularized danger that he would not otherwise have faced.'" Murguia, 61 F.4th at 1111 (quoting Martinez v. City of Clovis, 943 F.3d 1260, 1271 (9th Cir. 2019)) (alterations adopted). "'In examining whether an officer affirmatively places an individual in danger, we do not look solely to the agency of the individual, nor do we rest our opinion on what options may or may not have been available to the individual. Instead, we examine whether the officers left the person in a situation that was more dangerous than the one in which they found him.'" Id. (quoting Munger v. City of Glasgow Police Dep't, 227 F.3d 1082, 1086 (9th Cir. 2000)). "'The critical distinction is not . . . an indeterminate line between danger creation and enhancement, but rather the stark one between state action and inaction in placing an individual at risk.'" Id. (quoting Penilla, 115 F.3d at 710). "Furthermore, the plaintiff's ultimate injury must have been foreseeable to the defendant." Id. (citing Martinez, 943 F.3d at 1273). "'This does not mean that the exact injury must be foreseeable. Rather,

the state actor is liable for creating the foreseeable danger of injury given the particular circumstances.'" Id. (quoting Martinez, 943 F.3d at 1273–74) (internal quotation marks omitted).

Here, plaintiffs allege that defendants prevented F.R.'s family members from either rendering medical aid or transporting him to the hospital. This constitutes not a mere omission, but affirmative conduct that left F.R. "in a situation that [is] more dangerous than the one in which they found him." See Munger, 227 F.3d at 1086. As the Ninth Circuit has held, where officers find a plaintiff "facing a preexisting danger from [a] gunshot wound," "[i]mpeding access to medical care amounts to leaving [the plaintiff] in a more dangerous situation." Maxwell v. County of San Diego, 708 F.3d 1075, 1082 (9th Cir. 2013). See also Murguia, 61 F.4th at 1112 ("This court and other circuits have applied the state-created danger exception in situations where an officer abandoned the plaintiff in a dangerous situation, separated the plaintiff from a third-party who may have offered assistance, or prevented other individuals from rendering assistance to the plaintiff.")

The potential injury from an untreated gunshot wound is "objectively foreseeable as a matter of common sense." See Murguia, 61 F.4th at 1115–16. As the Ninth Circuit has held, the potential harm from "delaying a bleeding gun shot victim's [medical care]" is so "obvious" that such conduct demonstrates deliberate indifference. See Maxwell, 708 F.3d at 1083.

Because plaintiffs have sufficiently alleged that defendants affirmatively placed F.R. in danger with deliberate

indifference to his safety, the court concludes that plaintiffs have stated a claim under the state-created danger rule. Accordingly, the court will deny the motion to dismiss the first claim under the Fourteenth Amendment.

B. Special Relationship (Second Claim)

"The Fourteenth Amendment's Due Process Clause generally does not confer any affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests." Patel, 648 F.3d at 971. However, under the "special relationship" exception, state actors may be held liable for their omissions where they "'take[] a person into [their] custody and hold[] him there against his will.'" Id. at 971–72 (quoting Deshaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 199-200 (1989)). This exception exists because "a state cannot restrain a person's liberty without also assuming some responsibility for the person's safety and well-being." Id. at 972.

Defendants argue that F.R. was never placed into state custody. "'[C]ustody' for the purposes of the special-relationship exception is a restriction on the plaintiff's liberty that limits the ability of the plaintiff (or the plaintiff's parents) to meet the plaintiff's basic needs (e.g., incarceration, institutionalization, foster care)." Murguia, 61 F.4th at 1110.

Here, the officers removed F.R. from his relative's vehicle and prevented his relatives from even approaching him, let alone attending to his needs. In doing so, the officers held him in custody such that the special relationship exception was

triggered. See A.H. v. County of Tehama, No. 2:18-cv-02917 TLN DMC, 2020 WL 4474909, at *7 (E.D. Cal. Aug. 4, 2020) (plaintiffs stated a special relationship claim where they alleged that officers temporarily prevented them from "leav[ing] and seek[ing] medical help"). Cf. Murguia, 61 F.4th at 1110 (children were not in state custody for purposes of special relationship exception where they were with one parent at all times).

Accordingly, the court will deny the motion to dismiss the second claim under the special relationship exception.

C. Unreasonable Post-Seizure Care (Third Claim)

Under the Fourth Amendment, "[o]fficers must provide objectively reasonable post-arrest care" to an individual in police custody. Rosales v. County of San Diego, 511 F. Supp. 3d 1070, 1091 (S.D. Cal. 2021) (citing Tatum v. City & County of San Francisco, 441 F.3d 1090, 1098 (9th Cir. 2006)). "The Ninth Circuit has not precisely defined the contours of what it means to provide 'objectively reasonable post-arrest care.'" Henriquez v. City of Bell, 14-cv-196 GW SS, 2015 WL 13357606, at *6 (C.D. Cal. Apr. 16, 2015). "However, the Fourth Amendment analysis generally concerns whether the defendant's conduct was reasonable under the totality of the circumstances, viewed from the perspective of a reasonable person on the scene." Rosales, 511 F. Supp. 3d at 1091 (citing Plumhoff v. Rickard, 572 U.S. 765, 774–75 (2014); Tatum, 441 F.3d at 1098).

The leading Ninth Circuit case on this issue is Tatum v. City & County of San Francisco, 441 F.3d at 1098. Tatum involved a plaintiff who died of cocaine toxicity following his arrest. Id. at 1093. The Ninth Circuit concluded that the

arresting officers had provided objectively reasonable post-arrest care where they "promptly summon[ed] the necessary medical assistance" upon noticing the plaintiff's breathing was labored, continuously monitored the plaintiff's medical condition by checking his breathing and pulse, and upon realizing that the plaintiff's condition was deteriorating, contacted dispatch again to request that the ambulance be given priority. Id. at 1093, 1099.

Defendants argue that, as in Tatum, an ambulance arrived to take F.R. to the hospital, and accordingly the officers complied with the Fourth Amendment. See id. at 1099 ("the officers promptly requested medical assistance, and the Constitution required them to do no more"). However, this case is factually distinguishable from Tatum in multiple ways. First, it is not clear from the complaint that the officers involved did call for assistance at all. By the time the officers arrived, F.R.'s family had contacted emergency services and an ambulance had already been dispatched. (See Compl. ¶¶ 19-22.) Second, there are no allegations suggesting that the officers took steps to monitor F.R.'s medical condition. (See generally Compl.) Third, and perhaps most importantly, the officers did more than merely wait for emergency services to arrive; rather, they allegedly prevented F.R.'s family from either approaching him to check his condition and render medical assistance or transporting him to the hospital. (See Compl. ¶¶ 24, 26-27, 32.)

On the facts as alleged, a reasonable finder of fact could conclude that the officers' actions in preventing F.R. from accessing medical assistance from third parties was unreasonable

under the circumstances. See Rosales, 511 F. Supp. 3d at 1092 ("obstructing paramedics in an ambulance by attempting to handcuff an unconscious arrestee suffering a cardiac arrest is objectively unreasonable post-arrest care"); Ochoa v. City of San Jose, No. 21-cv-02456 BLF, 2021 WL 7627630, at *11 (N.D. Cal. Nov. 17, 2021) (denying motion to dismiss post-arrest medical care claim where plaintiff alleged that officers delayed access to medical care without a valid law enforcement purpose); Ostling v. City of Bainbridge Island, 872 F. Supp. 2d 1117, 1129–30 (W.D. Wash. 2012) (concluding that where plaintiff suffering from gunshot wound alleged that the defendant officers prevented plaintiff's father from checking on his condition, "a reasonable factfinder could conclude that [the officers'] restriction of medical aid was unreasonable and led to [the plaintiff's] death").

Defendants also argue that the officers had no obligation to provide reasonable post-seizure care under the Fourth Amendment because F.R. was not injured while being apprehended. However, in Tatum, the Ninth Circuit found that the officers were under such an obligation, despite the plaintiff's drug-related death not having been caused by the circumstances of the arrest. See 441 F.3d at 1092–93. That F.R.'s gunshot wound was unrelated to the circumstances of his seizure thus does not alter the outcome here.

Accordingly, the court concludes that plaintiffs have stated a claim for unreasonable post-seizure care and will deny the motion to dismiss the third claim under the Fourth Amendment.

D. Rehabilitation Act and Americans with Disabilities Act (Fourth and Fifth Claims)

"Title II of the ADA prohibits public entities from discriminating on the basis of disability. Section 504 [of the Rehabilitation Act] similarly prohibits disability discrimination by recipients of federal funds." Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 737 (9th Cir. 2021) (citing 42 U.S.C. § 12132; 29 U.S.C. § 794). "The two laws are interpreted coextensively because 'there is no significant difference in the analysis of rights and obligations created by the two Acts.'" Id. (quoting K.M. ex rel. Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088, 1098 (9th Cir. 2013)).

To state a claim for disability discrimination, "the plaintiff must allege four elements: (1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).

In support of their disability discrimination claims, plaintiffs allege that defendants impeded F.R.'s access to medical care. However, such allegations cannot form the basis for a disability discrimination claim because the ADA and Section 504 "prohibit[] discrimination because of disability, not

inadequate treatment for disability." See Simmons v. Navajo County, 609 F.3d 1011, 1022 (9th Cir. 2010), overruled on other grounds by Castro v. County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) (en banc). See also Wilkey v. County of Orange, 295 F. Supp. 3d 1086, 1093 (C.D. Cal. 2017) (allegations that defendants denied access to medical care cannot support claim for disability discrimination); Brown v. Brown, No. 1:14-cv-01184 LJO, 2015 WL 2374284, at *6 (E.D. Cal. May 18, 2015) ("the treatment, or lack of treatment, concerning Plaintiff's medical conditions does not provide a basis upon which to impose liability under the ADA").

Accordingly, the court will dismiss the fourth and fifth claims for disability discrimination under Section 504 and the ADA in their entirety.

E. Interference With Familial Association Under First and Fourteenth Amendments (Sixth and Seventh Claims)

Defendants request that the familial association claims be dismissed, yet fail to present any argument aside from a restatement of their Monell arguments. (See Mot. at 12.) The Ninth Circuit has long recognized parental claims for interference with familial association under both the First and Fourteenth Amendments. See Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010); Lee v. City of Los Angeles, 250 F.3d 668, 685–86 (9th Cir. 2001).[2] Accordingly, the court will deny the

[2] See also Mann v. City of Sacramento, No. 21-15440, 2022 WL 2128906, at *1 (9th Cir. June 14, 2022) (quoting Bd. of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537 (1987)) (in determining whether a familial association claim exists, courts look to multiple aspects of the relationship, including (1) the size of the group, (2) purpose of the group,

motion dismiss the sixth and seventh claims for interference with familial association against the Doe defendants.

F. Unreasonable Post-Seizure Care Under Article I, Section 13 of the California Constitution (Eighth Claim)

The California Supreme Court has not decided whether there is a private cause of action for damages under Article I, Section 13, which protects against unreasonable searches and seizures. See Julian v. Mission Cmty. Hosp., 11 Cal. App. 5th 360, 393 (2d. Dist. 2017). To determine whether the California Constitution provides for a private right of action, the court must engage in the analysis set forth by the California Supreme Court in Katzberg v. Regents of the University of California, 29 Cal. 4th 300, 317 (2002).

The Katzberg analysis employs a two-step approach. First, the court must "inquire whether there is evidence from which we may find or infer, within the constitutional provision at issue, an affirmative intent either to authorize or to withhold a damages action to remedy a violation." See Katzberg, 29 Cal. 4th at 317. In undertaking this inquiry, the court "shall consider the language and history of the constitutional provision at issue, including whether it contains guidelines, mechanisms, or procedures implying a monetary remedy, as well as any pertinent common law history." See id. If the court finds any such intent, it shall give it effect. See id.

Second, "if no affirmative intent either to authorize or to withhold a damages remedy is found, the court shall

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(3) its selectivity, and (4) "whether others are excluded from critical aspects of the relationship").

undertake the 'constitutional tort' analysis adopted in Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388-398 (1971), and its progeny." See id. "Among the relevant factors in this analysis are whether an adequate remedy exists, the extent to which a constitutional tort action would change established tort law, and the nature and significance of the constitutional provision." See id. If the court finds that the factors militate against recognizing the constitutional tort, the inquiry ends. See id. If the factors favor recognizing a constitutional tort, the court shall also consider the existence of any special factors counseling hesitation in recognizing a damages action, including "deference to legislative judgment, avoidance of adverse policy consequences, considerations of government fiscal policy, practical issues of proof, and the competence of courts to assess particular types of damages." Id.

"Section 13 does not mention damages," and the court is not aware of "any drafting history, ballot materials, historical records, or common law decisions suggesting section 13 was adopted with an intent to make damages available." Rios v. County of Sacramento, 562 F. Supp. 3d 999, 1022-23 (E.D. Cal. 2021) (Mueller, J.); see also Wigfall v. City & County of San Francisco, No. 06-cv-4968 VRW, 2007 WL 174434, at *5 (N.D. Cal. Jan. 22, 2007) (analyzing plain language and legislative history and finding an "absence of dispositive evidence concerning intent" to create a damages remedy under § 13); Manning v. City of Rohnert Park, No. 06-cv-03435 SBA, 2007 WL 1140434, at *1 (N.D. Cal. 2007) ("Neither the plain language of [] article I, section 13, nor the available legislative history indicate an

intent on behalf of the California Legislature to permit the recovery of monetary damages for its violation."); Leon v. City Of Merced, No. 1:14-cv-01129 GEB, 2015 WL 135904, at *4 (E.D. Cal. Jan. 9, 2015); Brown v. County of Kern, No. 1:06-CV-00121 OWW TAG, 2008 WL 544565, at *17 (E.D. Cal. Feb. 26, 2008).

Some courts have recognized a cause of action under § 13 based solely on dicta in Katzberg explaining that English common law "'provided a damage remedy for the victims of unlawful searches at common law.'" See, e.g., Brewster v. City of Los Angeles, No. 14-cv-2257 JGB SP, 2020 WL 5991621, at *15 (C.D. Cal. July 14, 2020) (quoting Katzberg, 29 Cal. 4th at 322). The court does not find this general common law history to be sufficient evidence of "affirmative intent" to create a private cause of action, and therefore resort to the second step of the Katzberg analysis is appropriate. See Katzberg, 29 Cal. 4th at 317.

The second step of the analysis -- which incorporates "Bivens and its progeny," see Katzberg, 29 Cal. 4th at 314 -- is significantly simplified by the Supreme Court's recent decision in Egbert v. Boule, 142 S. Ct. 1793 (2022). The Egbert court explained that since Bivens, Davis v. Passman, 442 U.S. 228 (1979), and Carlson v. Green, 446 U.S. 14 (1980), it has not implied any additional causes of action under the Constitution, despite multiple opportunities to do so, noting (1) the tension between judicially created causes of action and the separation of powers under the Constitution and (2) Congress' superior position to consider the policy considerations of creating a cause of action. Given these concerns, "if there are sound reasons to

think [the legislative branch] might doubt the efficacy or necessity of a damages remedy, the courts must refrain from creating it." Id. at 1802-03. "'Even a single sound reason to defer to [the legislature] is enough to require a court to refrain from creating such a remedy,' and 'if there is a rational reason to think that' the legislature should decide whether to provide for a damages remedy, 'no Bivens action may lie.'" Sheikh v. U.S. Dep't of Homeland Sec., No. 2:22-cv-00409 WBS AC, 2022 WL 16964105, at *3 (E.D. Cal. Nov. 16, 2022) (quoting Egbert, 142 S. Ct. at 1802-03) (alterations adopted).

Here, there are clear reasons to defer creation of a private cause of action under § 13 to the California Legislature. In particular, the Legislature has already undertaken to provide an alternative remedy for constitutional violations, including violations of § 13 -- specifically, the Tom Bane Civil Rights Act. See Egbert, 142 S. Ct. at 1806 (existence of an alternative legislatively-created remedy "foreclose[s]" the availability of a judicially-created cause of action); Rios, 562 F. Supp. 3d at 1022-23 (availability of remedy under Tom Bane Act counsels against recognizing cause of action under § 13); Brown, 2008 WL 544565, at *17 (same); Manning, 2007 WL 1140434, at *1 (same); Astorga v. County of Los Angeles, No. 2:20-cv-09805 ABA GR, 2022 WL 3449810, at *4 (C.D. Cal. Feb. 9, 2022) (same); Rivera v. County of San Diego, No. 16-cv-795 PSG KS, 2016 WL 10587937, at *9 (C.D. Cal. Dec. 5, 2016) (same); Weimer v. County of Kern, No. 1:06-cv-00735 OWW DLB, 2006 WL 3834237, at *8 (E.D. Cal. Dec. 28, 2006) (same).

The court therefore concludes that no private cause of

action is available under Article I, Section 13. Accordingly, the court will grant the motion to dismiss the eighth claim under the California Constitution.

G. Tom Bane Act Civil Rights (Ninth Claim)

Defendants argue that plaintiffs have failed to allege a specific intent to violate the plaintiff's rights, as required to state a claim under the Tom Bane Act. See Reese v. County of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018) (citing Cornell v. City & County of S.F., 17 Cal. App. 5th 766, 801 (1st Dist. 2017)). However, "specific intent" may be shown by demonstrating that the officer "acted . . . 'in reckless disregard of constitutional or statutory prohibitions or guarantees.'" See Cornell, 17 Cal. App. 5th at 803-04 (citation omitted); Reese, 888 F.3d at 1045 ("[A] reckless disregard for a person's constitutional rights is evidence of a specific intent to deprive that person of those rights.").

Here, plaintiffs' allegations that defendants impeded access to urgent medical care are sufficient to establish reckless disregard for purposes of a Tom Bane Act claim. See Galley v. County of Sacramento, No. 2:23-cv-00325 WBS AC, 2023 WL 4534205, at *5 (E.D. Cal. July 13, 2023) (allegations that defendants deprived access to medical care are sufficient to establish specific intent required for a Tom Bane Act claim). Accordingly, the court will deny the motion to dismiss the ninth claim under the Tom Bane Act.

IV. Municipal Liability

Plaintiffs' first, second, third, sixth, and seventh claims are § 1983 claims also brought against the County of Yuba

and the Yuba County Sheriff's Office. In addition to the arguments addressed above, defendants argue broadly that plaintiffs have failed to state sufficient allegations to support municipal liability under § 1983 against these defendants.

As § 1983 does not provide for vicarious liability, local governments "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 693 (1978). "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Id.

To state a Monell claim, "a plaintiff must allege either that (1) a particular municipal action itself violates federal law, or directs an employee to do so; or (2) the municipality, through inaction, failed to implement adequate policies or procedures to safeguard its community members' federally protected rights." Hyun Ju Park v. City & County of Honolulu, 952 F.3d 1136, 1141 (9th Cir. 2020) (internal quotation marks omitted).

Plaintiffs advance two theories of Monell liability: first, that defendants' official written transport policy led to the alleged constitutional violations; and second, that defendants' failure to provide adequate policies and training led to the alleged constitutional violations.

A. Written Policy

Plaintiffs point to Yuba County Sheriff's Office Policy 430.4 concerning the transport of ill and injured persons. The

policy provides that officers "should not transport persons who are unconscious, who have serious injuries or who may be seriously ill," and instead "EMS personnel should be called to handle patient transportation." (Compl. ¶ 46.) The policy also provides that "members should not provide emergency escort for medical transport or civilian vehicles." (Id.)

Plaintiffs argue that because the officers' actions were consistent with this policy, the policy is responsible for their allegedly unconstitutional conduct. However, plaintiffs' claims are not premised on the officers' refusal to transport F.R. or provide an escort for a civilian vehicle; rather, plaintiffs take issue with the officers' refusal to allow F.R. to be taken to the hospital in a civilian vehicle. This scenario falls outside the scope of the transport policy. It makes little sense to argue that the policy -- which does not apply to the events at issue -- is directly responsible for the alleged constitutional violations. Plaintiffs have therefore failed to state Monell claims premised on the written transport policy.

B. Failure to Train

In order to state a claim for failure to train under Monell, a plaintiff must allege that: (1) the existing training program is inadequate in relation to the tasks the particular officers must perform; (2) the officials have been deliberately indifferent to the rights of the persons with whom the police come into contact; and (3) the inadequacy of the training "actually caused the deprivation of the alleged constitutional right." See Merritt v. County of Los Angeles, 875 F.2d 765, 770 (9th Cir. 1989). The deliberate indifference standard is met

when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." City of Canton v. Harris, 489 U.S. 378, 390 (1989).

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." Connick v. Thompson, 563 U.S. 51, 62 (2011) (internal citations omitted). However, "[a] plaintiff . . . might succeed in proving a failure-to-train claim without showing a pattern of constitutional violations where 'a violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations.'" Long v. County of Los Angeles, 442 F.3d 1178, 1186 (9th Cir. 2006) (quoting Bd. of Cnty. Comm'rs v. Brown, 520 U.S. 397, 409 (1997)).

Here, plaintiffs have not alleged any pattern of similar constitutional violations, nor have they provided any other factual allegations suggesting deliberate indifference. The complaint generically states that the municipal defendants "were or should have been on notice" regarding the inadequacy of their policies or training "because the inadequacies of the policies, procedures, and training constituted life-threatening decisions and were so obvious and likely to result in the violation of rights of persons coming into contact with officials." (Compl. ¶ 52.) There are no underlying factual allegations that support this conclusion. As a result,

plaintiffs have failed to state a Monell claim based on failure to train. See Via v. City of Fairfield, 833 F. Supp. 2d 1189, 1196 (E.D. Cal. 2011) (Shubb, J.) ("Since Iqbal, courts have repeatedly rejected . . . conclusory allegations that lack factual content from which one could plausibly infer Monell liability.") (collecting cases).

Having concluded that plaintiffs have failed to state claims for Monell liability premised on either the transport policy or a failure to train, the court will grant the motion to dismiss the first, second, third, sixth, and seventh claims only as against the municipal defendants.

V. Remaining State Law Claims

A. IIED (Tenth Claim)

To state a claim for intentional inflection of emotion distress ("IIED"), a plaintiff must allege: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Potter v. Firestone Tire & Rubber Co., 6 Cal. 4th 965, 1001 (1993); Avila v. Willits Env't Remediation Tr., 633 F.3d 828, 844 (9th Cir. 2011) (same). "Conduct is 'extreme and outrageous' when it is 'so extreme as to exceed all bounds of that usually tolerated in a civilized community." Robles v. Agreserves, Inc., 158 F. Supp. 3d 952, 978 (E.D. Cal. 2016) (Ishii, J.) (quoting Hughes v. Pair, 46 Cal. 4th 1035, 1050 (2009); Potter v. Firestone Tire & Rubber Co., 6 Cal. 4th 965,

1001 (1993)). See also Crouch v. Trinity Christian Cent. of Santa Ana, Inc., 39 Cal. App. 5th 995, 1007 (4th Dist. 2019) ("Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'").

Defendants argue that plaintiffs fail to allege sufficiently extreme and outrageous conduct, yet cite no authority suggesting that preventing a parent from rendering aid to her child who is suffering from a gunshot wound is, as a matter of law, not "outrageous." Whether defendants' conduct was sufficiently "outrageous" to support a claim for IIED is a question of fact, and therefore inappropriate for resolution at the motion to dismiss stage. See Gonero v. Union Pac. R. Co., No. 2:09-cv-2009 WBS JFM, 2009 WL 3378987, at *10 (E.D. Cal. Oct. 19, 2009). Accordingly, the court will deny the motion to dismiss plaintiff's tenth claim for IIED.

B. Negligence (Eleventh Claim)

"The elements of a negligence cause of action are: (1) a legal duty to use due care; (2) a breach of such legal duty; (3) the breach was the proximate or legal cause of the resulting injury; and (4) actual loss or damage resulting from the breach of the duty of care." Megargee v. Wittman, 550 F. Supp. 2d 1190, 1209 (E.D. Cal. 2008) (O'Neill, J.).

1. F.R.

Defendants argue that no duty was owed to F.R. While the California Supreme Court has not opined on the matter, the Ninth Circuit has concluded that California law likely imposes a duty of care upon a law enforcement officer with respect to an

individual "in his custody in need of immediate medical attention." See Frausto v. Dep't of Cal. Highway Patrol, 53 Cal. App. 5th 973, 993 (1st Dist. 2020) (citing Winger v. City of Garden Grove, 806 F. App'x 544, 546 (9th Cir. 2020)). Plaintiffs allege that the F.R. was in custody and in need of urgent medical attention. (See Compl. ¶¶ 17, 28, 31.) The court therefore concludes that plaintiffs have sufficiently alleged that defendants owed F.R. a duty of care.

2. Lori Rosiles

Ms. Rosiles relies on the "bystander" theory of negligent infliction of emotional distress. To state such a claim, Ms. Rosiles must allege, inter alia, that she "'was present at the scene of the injury producing event at the time it occurred and was then aware that it was causing injury to the victim." See Martin v. Cal. Dep't of Veterans Affs., 560 F.3d 1042, 1051 (9th Cir. 2009) (quoting Thing v. La Chusa, 48 Cal.3d 644, 257 (1989)) (alterations adopted). See also Mandel v. Hafermann, 503 F. Supp. 3d 946, 983 (N.D. Cal. 2020) ("Under California law, [negligent infliction of emotional distress] 'is not an independent tort,' but an articulation of a general negligence claim.") (quoting Christensen v. Superior Ct., 54 Cal. 3d 868, 894 (1991)).

Here, plaintiffs allege that Ms. Rosiles arrived home during the incident but, like F.R.'s other relatives, was prevented from rendering aid to F.R. (See Compl. ¶ 34.) Based on the allegations of the complaint, it seems all but certain that Ms. Rosiles was aware of F.R.'s medical situation and the alleged harm being done by the officers present. (See id. ¶ 28

(F.R.'s relatives "pleaded with Defendants . . . to move the patrol vehicles and permit [F.R.] to be transported to the hospital"); id. ¶ 34 (Ms. Rosiles "was prevented by Defendants . . . from coming near where [F.R.] was lying on the ground"). The complaint thus sufficiently alleges that Ms. Rosiles "was present at the scene of the injury producing event at the time it occurred and was then aware that it was causing injury to the victim." See Martin, 560 F.3d at 1051. The court therefore concludes that Lori Rosiles has stated a claim for negligence.

Having concluded that both plaintiffs have stated negligence claims, the court will deny the motion to dismiss the eleventh claim for negligence.

C. Wrongful Death (Twelfth Claim)

"'The elements of the cause of action for wrongful death [under California Code of Civil Procedure § 377.60] are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the pecuniary loss suffered by the heirs.'" Deloney v. County of Fresno, No. 1:17-cv-01336 LJO EPG, 2019 WL 1875588, at *9 (E.D. Cal. Apr. 26, 2019) (citing Quiroz v. Seventh Ave. Center, 140 Cal. App. 4th 1256, 1263 (6th Dist. 2006)). Defendants argue only that because plaintiffs have failed to state a claim for negligence, the wrongful death claim -- purportedly predicated on the negligence claim -- must also fail. However, as the court already found, plaintiffs have stated a claim for negligence. Accordingly, the court will deny the motion to dismiss the twelfth claim for wrongful death.

IT IS THEREFORE ORDERED that defendants' motion to dismiss (Docket No. 7) be, and the same hereby is, GRANTED IN

PART as follows. The fourth claim under the Rehabilitation Act, the fifth claim under the Americans with Disabilities Act, and the eighth claim under the California Constitution are DISMISSED in their entirety. The first claim under the state-created danger rule, second claim under the special relationship exception, third claim under the Fourth Amendment, sixth claim for interference with familial association under the Fourteenth Amendment, and seventh claim for interference with familial association under the First Amendment are DISMISSED only as against the County of Yuba and Yuba County Sheriff's Office. The motion is DENIED in all other respects. If plaintiffs are not satisfied to move forward in this action on their nine remaining claims, they are given twenty days from the date of this Order to file an amended complaint, provided they can do so consistent with this Order.

Dated: September 19, 2023

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE